



KENYA

STATEMENT

BY

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COHESION AND CONSTITUTIONAL AFFAIRS

AT THE PRESENTATION OF KENYA'S  
COMBINED INITIAL- FOURTH REPORTS

UNDER THE CONVENTION ON THE  
ELIMINATION OF ALL FORMS OF RACIAL  
DISCRIMINATION

MONDAY, 15<sup>TH</sup> AUGUST, 2011

GENEVA, SWITZERLAND

**Chairperson, Mr. Anwar Kemal**

**Distinguished members of the Committee,**

**Ladies and Gentlemen**

*(Introduction of the delegation)*

It gives me great pleasure to lead the Kenya delegation when at last, Kenya can commence dialogue with this committee.

Allow me, on behalf of the Government and the people of Kenya, to extend our congratulations and appreciation to the Committee for the exemplary manner in which you carry out your mandate. I would like to assure you that, as restated in the preamble to our Constitution, the people of Kenya are proud of their ethnic, cultural and religious diversity and are therefore determined to live in peace and unity.

As a signatory to the Convention on the Elimination of all Forms of Racial Discrimination, I wish to affirm the importance that Kenya attaches to every individual's dignity and the right not to be discriminated against.

Indeed, Kenya's national values and principles of governance, as stipulated in our Constitution, include human dignity, equity, social justice, inclusiveness, equality, non-discrimination, human rights and protection of the marginalized.

It is in this context that we approach our dialogue and discussions today the measures Kenya has taken to fulfil its obligations under the Convention.

I would like to provide a little background to the state of human rights in Kenya generally, as an introduction to our report.

Since 2003, Kenya has made significant strides towards being a more human rights respecting state though not without challenges. Our biggest gain has been the endorsement of a new Constitution, on 4<sup>th</sup> August, 2010 by Sixty-seven percent of Kenyan voters, through a national referendum.

The Kenya Constitution, 2010, addresses Kenya's governance challenges and more fundamentally renews Kenyans' faith in the rule of law and establishes value driven national institutions. The Constitution represents the promise to restore the integrity in our governance institutions particularly in the Executive, the Judiciary, Parliament, the Public Service and the Electoral System.

More importantly, its full implementation will be a major factor for the achievement of Kenya's vision, 2030 and the promise founded on human dignity, equality and freedom for all.

**Mr. Chairman,**

Inequality in Kenya is manifested in different forms. Differences in the share of income and social services are observed across regions, genders and even specific segments of the population. Certain forms of these inequalities constitute discrimination, especially when these touch on the ability of marginalised and vulnerable groups' Right to participate in making decisions that affect their well being. This is exacerbated by the inequality between men and women, persons with disabilities, children and others especially due to insensitive formal and informal legal structures. Inequality is officially acknowledged in Kenya and its redress has been at the heart of, first, the Economic Recovery Strategy 2003-2007 and secondly, the Vision 2030.

The *Kenya Vision 2030* is a long term plan to guide Kenya's development agenda up to 2030.

Under the *Vision 2030*, Kenya is expected to become a middle income, prosperous country, providing a high quality of life for all the people. The three pillars of the Vision will ensure that Kenya achieves and sustains growth in the economic sphere, build a just and cohesive society through equitable social development, and produce a democratic political system that nurtures issue-based politics, the rule of law, and protects all the rights and freedoms of every individual in our society.

The launch of Vision's, First Medium Term Plan (MTP), 2008-2012, marked a critical milestone for Kenya as it is now the primary document which outlines the policies, reform measures, projects and programmes that the Government has committed to implementing during the period.

Among the priority areas which were under implementation in its first year and which have a great impact on human rights, are projects geared towards national healing and reconciliation, as well as rapid economic reconstruction to reverse the damage and setbacks that the country suffered following the post-election violence witnessed in 2008. The prominence given to measures to promote equity is expected to contribute to the reconciliation process and the overall national economic growth.

Other critical issues and challenges that the MTP addresses, which have a great impact on the realization of human rights, include the creation of more employment opportunities especially for the youth and the attainment of gender balance in the National programmes. Regional poverty estimates for Kenya reveal that poverty varies widely by region and its incidence is particularly high in semi-arid areas of the country. Overall, the Kenyan poor are disproportionately found in: rural areas; households headed by widows and less educated persons; large households; and certain types of occupations

such as subsistence farmers, unskilled public and private sector workers and unpaid family workers. Introducing measures aimed at ensuring equitable development in all regions of the country therefore, is also a key objective of the MTP.

**Mr. Chairman,**

As we have stated in the report under consideration, negative ethnicity or tribalism has been the greatest threat to Kenya's national unity. Cultural identity has been politicized, thus creating serious inter-ethnic conflicts in many parts of the country. Such conflicts have been fuelled, inter alia, by historical differentiations arising from the divide-and-rule tactics pursued by the country's former colonial authorities that persisted to the post colonial era. For example, the differing access to modernization through education and employment has been used to polarise communities against one another. This has led to certain attitudes, perceptions and prejudices across Kenya's cultural landscape and some very strong feelings of marginalization by a number of communities. This largely precipitated the unprecedented crisis and violence that left about 1,500 Kenyans dead and hundreds of thousands internally displaced, after the disputed presidential elections of 2007.

Since then, a new public debate about diversity in Kenya has begun. The debate is that, suppressing and denying diversity, leaving the minorities and other vulnerable members of the society in poverty and politically marginalized, is a sure recipe for different conflicts. On the other hand, including and respecting, the vulnerable, minorities and indigenous peoples, and making sure that development reaches all the regions and all peoples, will not only uplift the poorest out of poverty but also deliver sustainable conflict-free development.

This reality informs a lot of the rights guaranteed and the obligations imposed on the state by the Constitution of Kenya, 2010. For example, Art. 21 (3) of the Constitution obligates all State organs and all public officers to address the needs of vulnerable groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalised communities, and members of particular ethnic, religious or cultural communities. The specific rights and obligations in the Constitution will be discussed in detail as we continue this dialogue.

**Mr. Chairman,**

Currently, even as we develop new legislation and realign others to the new Constitution, we have important legislation in Kenya to guarantee equality before the law, equal protection under the law and anti-discrimination. Our legislation generally prohibits direct discrimination, indirect discrimination, victimisation and harassment. It prohibits discrimination on the grounds of race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth in the areas of employment (and employment-related areas), education in schools, the provision of goods, facilities and services, political parties and the exercise of public functions.

The legislation also imposes positive obligations on public authorities to promote equality of opportunity on grounds of ethnic diversity, disability and gender. This requires public authorities to proactively root out discrimination and to promote equality of opportunity in the design and delivery of policies and services, and in their capacity as employers. It is clear to all that these duties may require positive actions to address disadvantage and to integrate equality into all areas of a public authority's work.

The different pieces of legislation are discussed in the report.

**Mr. Chairman,**

As I conclude my statement, I would like to underscore that, like many other countries undergoing rapid reforms, we continue to face many challenges in alleviating poverty which is a major contributor to a lot of the inequalities that Kenya is determined to address in a sustainable manner. There is need to accelerate and sustain economic growth in Kenya. However; like other countries, we realised that poverty alleviation efforts are more successful when accompanied by not only growth policies but also distributional policies that reduce inequality.